

REMARKS

This is in response to the Office Action of December 29, 2008. Claims 2 and 3 are amended to correct an alleged lack of antecedent basis for certain language therein. These are non-narrowing amendments. No new matter is introduced by this Amendment. Claims 1-10 are pending in this application.

Rejection under 35 U.S.C. § 112

Claims 2 and 3 were rejected under the second paragraph of 35 U.S.C. § 112 as failing to define the invention properly. Office Action, page 2. The rejection was based upon an alleged lack of proper antecedent basis for certain language in claims 2 and 3. Claims 2 and 3 have been amended to overcome this ground of rejection. This is clearly a non-narrowing claim amendment.

Rejection under 35 U.S.C. § 102

Claim 1 is rejected under 35 U.S.C. § 102(e) as being anticipated by US 7,396,865 B2 ("Tsuiji"). It is noted that in the Office Action, the Examiner recites the number "7,296,865." However, it is clear that the Examiner intends to rely on US "7,396,865."

The Tsuiji patent issued on July 8, 2008, which is subsequent to the filing of the present application. Accordingly, the Tsuiji patent does not constitute a reference against the present application under 35 U.S.C. § 102(b) or under 35 U.S.C. § 102(a). The Tsuiji patent has an effective date as a reference under 35 U.S.C. § 102(e) of January 17, 2006, which is the filing date of the continuation application that matured into the Tsuiji patent.

More specifically, it is seen that the Tsuiji patent claims benefit to an international application which was filed on or after November 29, 2000 and that the WIPO publication was not in English. In this connection, the WIPO publication was WO 2005/010101 A1, which was published in Japanese. Therefore, since the Tsuiji patent issued from a U.S. continuing application (not a U.S. national phase application) claiming benefit of the international application, the effective date as a reference under 35 U.S.C. § 102(e) of the Tsuiji patent is the

filing date of the continuing application (January 17, 2006). (It is noted that if a patent issues from a U.S. national phase of an international application which was filed on or after November 29, 2000 and the WIPO publication thereof was not in English, the U.S. national phase application, when issued as a patent, would have *no* 35 U.S.C. § 102(e) date.)

The present application is the U.S. national phase of an international application that was filed on November 26, 2004. The November 26, 2004 international filing date of the present application is the effective U.S. filing date of the present application. Accordingly, the Tsuji patent does not constitute a reference against the present application under 35 U.S.C. § 102(e).

Applicants supply the following comments concerning the merits of the rejection.

The oxygen absorber of the present invention contains a cyclized conjugated diene polymer as an active ingredient. By virtue of containing the cyclized conjugated diene polymer, the oxygen absorber of the present invention provides advantageous effects – specifically, it exhibits a high oxygen-absorbing ability, even if a transition metal salt is not added thereto as a catalyst. It also maintains a high mechanical strength even after the absorber absorbs oxygen. Specification, page 4, lines 4-11. These benefits are not provided by the Tsuji technology.

In contrast to the present invention, Tsuji merely discloses a conjugated diene rubber and a ring-opened polymer of a cyclic olefin separately. Tsuji does not disclose a cyclized product of a conjugated diene rubber, as used in the in the present application. Furthermore, in Tsuji, the cyclic compound is used simply as a monomer, and the ring-opened polymer of a cyclic olefin disclosed therein is not a “cyclized product.” Accordingly, the presently claimed invention is not found in the Tsuji disclosure.

Objection to claims

On page 3 of the Office Action, objection was raised to claims 4-10 on the ground that they depend from a rejected base claim. Applicants respectfully submit that the rejection of record of independent base claim 1 should be withdrawn, for reasons discussed hereinabove. Withdrawal of the rejection would obviate the objection stated in the Office Action.

Conclusion

Entry of the above amendments is earnestly solicited. An early and favorable first action on the merits is earnestly solicited.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Richard Gallagher (Reg. No. 28,781) at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.14; particularly, extension of time fees.

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Respectfully submitted,

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